

SENATE BILL REPORT

ESSB 6442

As Amended by House, March 5, 2008

Title: An act relating to the office of public defense.

Brief Description: Modifying provisions relating to the office of public defense.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Regala, Stevens, Kline, Zarelli, Tom, Parlette, Hargrove, Swecker, Fraser, Pridemore, McDermott and Kohl-Welles).

Brief History:

Committee Activity: Judiciary:1/22/08, 1/23/08 [DPS].

Passed Senate: 2/11/08, 48-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6442 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, McDermott, Roach and Weinstein.

Staff: Lidia Mori (786-7755)

Background: The Office of Public Defense (OPD) was legislatively created in 1996 to implement the constitutional guarantee of counsel and to ensure the effective and efficient delivery of the indigent appellate services funded by the state of Washington. The Legislature has gradually increased the duties of OPD to include representation of parents at dependency and termination proceedings, improvement of public defense at the trial level, and training. In total, OPD has duties in the following six areas: (1) contracting for state funded appellate indigent defense in 39 counties; (2) representation of parents in dependency and termination of parental rights proceedings in 25 of the 39 counties; (3) continuing education and training for public defenders; (4) compiling and prioritizing counties' extraordinary criminal justice costs; (5) consultation with counties to improve their indigent defense; and (6) operating a grant program that assists counties and cities with meeting standards or improving indigent defense outcomes. The staff at OPD do not represent clients in court. People are represented by attorneys who contract with OPD and the contract attorneys are managed and supervised by OPD.

In accordance with the Washington Sunset Act, the OPD is scheduled to terminate on June 30, 2008. Washington law requires the Joint Legislative Audit and Review Committee to conduct a program and fiscal review of any entity scheduled for termination under the

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Washington Sunset Act. The Office of Public Defense Sunset Review Report was approved for distribution on January 9, 2008.

Summary of Engrossed Substitute Bill: The Director of OPD is required to administer all state-funded services in the program areas of trial court criminal indigent defense, appellate indigent defense, representation of indigent parents in dependency and termination cases, extraordinary criminal justice cost petitions, and compilation of copies of DNA test requests by persons convicted of felonies. In addition, the Director must submit a biennial budget for all costs related to these program areas. An annual report on indigent defense services is required to be submitted by the Director to the OPD advisory committee, the Legislature, and the Supreme Court.

The OPD advisory committee is expanded to include the following persons: one person appointed by the Washington State Association of Counties; one person appointed by the Association of Washington Cities; one person appointed by the Washington Association of Prosecuting Attorneys and one person appointed jointly by the Washington Defender Association and the Washington Association of Criminal Defense Lawyers. No person appointed to the advisory committee may provide indigent defense services funded by a city, county, or the state, except on a pro bono basis, during the term of his or her appointment. No person may serve as a judge, except on a pro bono basis, or a court employee, during his or her term of appointment. The duties of the advisory committee are specified.

The provision that would sunset OPD effective July 1, 2008 is repealed.

The provision in the bill that would have repealed the transfer of authority from the Supreme Court and the Administrative Office of the Courts to the OPD is removed.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: The Legislature had the foresight to establish a sunset review of the OPD. The Joint Legislative Audit and Review Committee's review asked the following four questions about the office: Is it complying with legislative intent? Is it operating in an efficient and economical manner, with adequate controls in place? Is it reaching expected performance goals and targets? Is it duplicating activities performed by another agency or the private sector? The review gave the OPD a clean bill of health. Having a retired prosecutor who has experience managing a big caseload on the advisory board would be a good addition. The language worked out in the House included the appointment of someone with public defender experience to the advisory committee also.

Persons Testifying: PRO: Senator Regala, prime sponsor; Joanne Moore, Sophia Byrd McSherry, OPD; Tom McBride, Washington Association of Prosecuting Attorneys.

House Amendment(s): The OPD advisory committee is expanded to include one person appointed by the Washington State Association of Counties and one person appointed by the Association of Washington Cities.